## BEFORE THE FAIR POLITICAL PRACTICES COUNTSSION

In the Matter of:	)	
	}	No. 75-014
Opinion requested by	)	July 3, 1975
John P. Cilovist	)	<u>-</u>

BY THE CO'LLSSIOT. We have been asked the following question by John P. Gilchrist:

John Gilchrist is a loobyist under the Political Reform Act of 1974. His wife, Ingrid Gilchrist, is starting a business to engage in framing and matting of pictures. Eight to ten other individuals, at least one of whom is the vife of a member of the Legislature, are also starting new businesses at the same location. The individuals, including Mrs. Gilchrist, who are starting the businesses propose to hold receptions announcing the opening of new "shows" at their several businesses. At each such reception, all of the proprietors will contribute equally to the cost of the reception. It is likely that there will be legislators and state officials among the guests at some of the proposed receptions.

- (1) What provisions, if any, of the Political Referm Act of 1974 apply to the proposed reception or to the expenses incurred in connection therewith?
- (2) Would the giving of such a reception by Mrs. Gilchrist or the fact that it will (or may) be attended by an unknown number of public officials or legislators or both have any effect on what Mr. Gilchrist is required to report as a lobbyist, or on the limitations contained in the law on the amounts which Mr. Gilchrist is permitted to spend as a lobbyist?
- (3) If so, what would the said effects be, and what sections of the law would be involved?

## CONCLUSION

The Political Reform Act applies to the reception and the expenses incurred in connection therewith if Mrs. Gilchrist is acting as her husband's agent or if he arranges for the payments. If the payments are made as part of Mrs. Gilchrist's management and control of her business, they are not chargeable to Mr. Gilchrist. The effects on Mr. Gilchrist's reporting obligations and the sections of the Act involved are discussed below.

## ANALYSIS

The activities of John P. Gilchrist as a registered lobbyist are regulated by Chapter 6 of the Political Reform Act. Any exchange between a lobbyist and an elective state official, legislative official or agency official or rember of the family of any such official must be reported under the Act. Government Code Section 86107.1/
The offering of entertainment and refreshments contemplated in these receptions would be exchanges within the definitions of the Act and the regulations adopted pursuant to the Act.2/

Two transactions are in question here: Providing funds to cosponsor the receptions jointly with a legislator's wife, and offering food and beverages to various officials at the receptions.

The payment by Mrs. Gilchrist of a share of the cost of a reception does not constitute a gift from Mrs. Gilchrist to the legislator's vife if consideration is present in the amount paid by the legislator's wife.

"Gift" means any payment to the extent that consideration of equal or greater value is not received. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value....

Section 82028.

Although the burden of proof that the payment made by the legislator's vife is equal to the amount paid by Mrs. Gilchrist would be on the lobbyist should the matter be questioned, we pelieve this burden is satisfied since Mrs. Gilchrist and the legislator's vife contribute equal amounts, as do the other proprietors.

A further question is whether the payment made for the reception is a reportable "exchange" with the legislator's wife.

Mrs. Gilchrist is not herself a loobyist and has no obligation under the Act. The question of whether Mr. Gilchrist must report the exchange raises the larger issue of the applicability of the Act to the activities of the spouse of a loobyist. If a lobbyist acts through his or her spouse as an agent, this conduct is regulated by the Act as though it were the loobyist's own act. However, one spouse is not automatically the agent of the other spouse. "The

<sup>1/</sup> All statutory references are to the Government Code unless otherwise noted.

<sup>2/</sup> See FPPC Regs. Section 18620.

relationship of husband and vife does not carry with it the relationship of principal and agent." Williams v. Tam, 131 C. 64 (1900); Brown v. Oxtoby, 45 C.A.2d 702 (1941); Falo Fito Building Company v. Johns, 81 C.A.2d 725 (1947). In each instance the existence of non-chistence of an agency relationship depends on the particular facts. In the present case, if Mrs. Gilchrist is acting as in. Clicipist's agent, he could be responsible and the cuchings would be reportable. We are given no facts, to ever, suggesting that Mrs. Gilchrist is acting as agent for Mr. Gilchrist. Accordingly, we conclude that based on the facts we are given, there is no requirement that the recoptions be reported as "exchanges' between the lobbyist and the legislator's wife.

We turn next to the consequences of officials attending the reception, who receive a "gift" of food and drink. If this gift is made by a lobbyist or arranged for by a lobbyist, it is subject to the limits and the reporting requirements of the Act. Gifts are reportable by a lobbyist under Section 86107(b)(4). Furthermore, a lobbyist is prohibited from making gifts exceeding ten dollars in one month to state candidates, elected state officers, legislative officials and agency officials. Sections 86201 and 86203.

The question we must consider is whether gifts made by a lobbyist's spouse to a public official incidental to the management of a business are chargeable to the lobbyist. It would be possible to conclude that the lobbyist and spouse are separate individuals, and that the making of a gift by the spouse cannot be attributed to the lobbyist in the absence of an agency relationship. Alternatively, we could confude that then the gift is made from community property, the lobbyist's wealth is diminished by the amount of the gift, and that the gift must therefore be attributed to the lobbyist in all such cases.

We believe, however, that neither "absolute" view is a correct interpretation of the Act. The prohibition on gifts from lobbyists to officials is intended to prevent the official from feeling under a personal obligation to the lobbyist which might conceiously or subconceiously affect the official's decisions. To permit the lobbyist's spouse to make such gifts without limitation on the ground that the spouses are separate individuals would be to ignore the realities of normal social intercourse and would create a major and unnecessary loophole in the law. Gifts from the lobbyist's spouse could have an effect identical to gifts from the lobbyist, even if all t'e legal requirements for an agency relationship are mot present. Accordingly, we believe that

We are not told whether the receptions are open to the public generally or are by invitation only. If anyone may attend the reception it is arguable that no "gift" has been made within the meaning of the Act, because the official is treated no differently than other members of the public. Because of the views expressed in the text, it is not necessary for us to reach this issue.

normally, a gift made by the spouse from community property is chargeable to the spouse.

To apply such a principle without exception, however, would go beyond the projectors and purposes of the Act. Then there are circumstances present which clearly indicate that the spouse is acting the iclimination of the length and for you area of his or her own thich are unrelated to those of the lobby st, we do not believe the gift is properly chargeable to the lobbyist. In the present case, where the gift is rade incidental to the management of a business by the spouse and where there is no ind.cation that the spouse is seeling to further the purposes of the lobbyist, we believe such circurstances are present. Accordingly, we believe the gift of food and beverages to an oublic officials who attend the receptions are not charcoaule to Mr. Gilchrist, and that in the absence of regulations to the contrary by the Compission, such gifts are not reportable. Our conclusion is consistent with the law of community property which, while requiring the consent of both spouses to the making of a gift, provides that a spouse who manages a business has the sole management and control of the business. Civil Code Section 5125(b) and (d).

Approved by the Commission on July 3, 1975. Concurring: Carpenter, Lovenstein, Miller and Waters. Commissioner Brosnahan abstained.

Daniel H. Lovenstein

Chairman

The Commission presently has pending before it a proposed regulation which would, if adopted, make such gifts by the spouse of a lobbyist reportable under Section 86107(g).